IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.1329 of 2008
BABAN TIWARI
Versus
STATE OF BIHAR
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3. 1.12.2008. This revision has been preferred against the judgment and order dated 16th September,2008 passed by Fast Track Court No.II, Aurangabad in Cr. Appeal No.36 of 1983/89 of 2006 thereby the judgment of conviction and sentence dated 12.5.1983 passed by Syed Aftab Ahmad, Judicial Magistrate, Ist Class, Aurangabad in Trial No.1330 of 1983 arising out of G.R. No.784 of 1979 has been confirmed.

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The learned magistrate vide aforesaid judgment dated 12.5.1983 has convicted this petitioner under section 25(1)A of the Arms Act and has sentenced him to undergo R.I. for one year.

Heard the learned counsel for the petitioner.

The learned counsel for the petitioner presses this application only on the point of sentence. It is submitted that this case is of the year 1978. The petitioner was found in possession of only four live

cartridges. There is no criminal antecedent against him. The petitioner has already suffered mental agony for 30 years in a case like this. It is further submitted that it is a fit case where benefit of section 4 of Probation of Offenders Act should be extended to the petitioner. In support of it, he has relied upon two decisions reported in 2000 Cr. Law Journal 5092 (Rajasthan) and 1992 Cr. Law Journal 2656 (Allahabad).

Considered the submission of the learned counsel for the petitioner. Perused the impugned judgment of both the courts. The petitioner has already suffered mental agony for 30 years. The petitioner was found in possession of only four live cartridges. There is no criminal antecedent.

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In view of the decisions cited above, it is quite clear that even in case of Arms Act, the benefit of section 4 of the Probation of Offenders Act can be extended in appropriate case.

Having regard to the facts and circumstances, I am of the view that it is a fit case in which the benefit of Probation of

Offenders Act should be extended to the petitioner.

Accordingly, while upholding the judgment of conviction, the sentence awarded to the petitioner is hereby set aside. He is directed to be released under section 4 of Probation of Offenders Act on furnishing probation bond of Rs.2,000/- with one surety for a period of one year to main peace and be of good behaviour. The probation bond must be furnishing within 15 days of receipt of this order, failing which the sentence awarded by the court below shall stand.

Let this order be communicated to the court below through fax on cost being deposited by the petitioner.

(Ghanshyam Prasad)

N.H./

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